IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.L.P..No. 552 of 2007()

ST.6/2005 of J.M.F.C., PATTAMBI

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PETITIONER/COMPLAINANT:

GEEVER CHERIAN,S/O.CHERIAKKU,
THOLATHU HOUSE,KARUKAPUTHUR,P.O.,
CHAZHIYATTIRI,OTTAPALAM TALUK.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

RESPONDENTS:

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1. VENUGOPALAN,S/O.KUTTIKRISHNAN NAIR,
VELLIYAMKALATHIL VEEDU,
PAINGANNUR P.O., VALANCHERRY,
MALAPPURAM DISTRICT.

2. STATE OF KERALA ,REP.BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

R2-BY P.P.SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL L.P.NO.552 OF 2007

Dated this the 18th day of September, 2007.

O R D E R

This is a petition for special leave to appeal against the judgment in S.T.No.6/2005 on the file of the Judicial Magistrate of First Class, Pattambi. The petitioner/complaint filed a complaint before court below alleging that the 1st respondent herein had borrowed an amount of Rs.48,000/= from the complainant and for the discharge of the said amount, Ext.P1 cheque has been issued in favour of the petitioner and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent/accused. After complying the statutory provisions regarding notice and on seeing that the amount covered by the cheque has not been repaid, the complaint has been filed before the court alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act.

2. To prove the complaint against the 1st respondent, the complainant himself was examined as PW1 and Exts.P1 to P6 were

also produced. When the 1st respondent/accused was questioned under Section 313 of the Code, the entire allegation in the complaint has been denied by the 1st respondent and had stated that the cheque in question was issued not for the discharge of any legally enforcible debt but, as a security for getting the chitty amount of the 1st respondent which he had bidden and the chitty has been conducted by the petitioner/complainant. To prove this case, three witnesses were examined as Dws 1 to 3 and Exts.D1 to D4 were also produced. Relying on the evidence adduced by both sides, the trial court found that the petitioner/complainant miserably failed to prove that Ext.P1 cheque was issued in discharge of any legally enforcible debt and the 1st respondent/accused was acquitted accordingly. Against the acquittal order, this special leave to appeal has been filed.

3. It is the case of the petitioner/complainant that the 1st respondent had borrowed an amount of Rs.48,000/= from the petitioner/complainant and in discharge of the said amount, Ext.P1 cheque has been issued. However, the trial court after considering the entire evidence found that the petitioner could not prove the case against the 1st respondent. To come to this conclusion, the trial

court found that the evidence of PW1 would show that the complainant was the Director of Valanchery Kuries and Loans Pvt.Ltd and the 1st respondent was the subscriber of two chits in that chitty and when the amount of the chitty has been bidden by the 1st respondent, he had given Ext.P1 cheque and some other signed stamped papers for getting the amount which he had bidden. In the admission even made by PW1 regarding the ownership or directorship of the Valanchery Kuries and Loans Pvt. Ltd, the trial court found that the 1st respondent had also taken ticket Nos.53 and 35 for Rs.16,500/= and Rs.22,5000/= respectively in the above kury. It was also admitted by PW1 that the chitty amount would be given only on furnishing sufficient security to the satisfaction of the Foreman and on executing necessary documents guaranteeing the future payments in the kury. For proving the case of the 1st respondent, he had examined DWS 1 to 3 out of whom, DW2 was one of the memberS in the kury conducted by the complainant and he was also admitted the fact that the 1st respondent was a subscriber to the above kury. Considering all these aspects, the trial court found that the petitioner could not prove the case against the 1st respondent that the he had committed an offence punishable under Section 138 of the

N.I.Act.

After considering the findings entered by the trial court and on perusing the records and also on considering the grounds urged in the Memorandum of Special Leave to Appeal, this Court is of the view that the judgment of the trial court is on evidence and it requires no interference. Accordingly, the Special Leave to Appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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